

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1447 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHOGILAL SOMABHAI PATEL

Versus

URBAN LAND TRIBUNAL AND EX- OFFICIO ADDL. CHIEF SECRETARY

Appearance:

MR PM BHATT for Petitioner

MRS TALATI ASSTT GOVT PLEADER for Respondent No. 1, 2

MR PRABHAKAR UPADHYAY for Respondent No. 3 & 4

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 29/04/98

ORAL JUDGEMENT

1. When this petition was admitted on March 05, 1990, the following order was passed :

"Rule.

Interim relief in terms of para 8(c) on condition that the petitioner shall not alter the position of the vacant land in any manner whatsoever and shall keep the land vacant. The petitioner shall

make declaration and file undertaking before this Court containing the following details :-

- (i) The petitioner shall declare the names and addresses of the persons in possession of the vacant land as on today.
- (ii) If any one is in possession of the land who is not a party to these proceedings, the petitioner shall cause such persons to be joined as party to the proceedings within a period of one month from today.
- (iii) The petitioner shall not alter the possession of the land and shall not alienate the interest in the land in question in favour of any other person either by sale, mortgage or in any manner whatsoever.
- (iv) Similarly, petitioner shall not transfer the possession of the land in favour of any other person without the permission of this Court.
- (v) If there are other persons in possession of the land, the petitioner shall see to it that other persons who are in possession of the land also file similar undertaking.

Declaration and Undertaking(s) as aforesaid shall be filed on or before April 05, 1990.

A copy of the undertaking(s) shall be served upon both the respondents by registered A.D. post, together with a copy of this order and registered A.D. slip shall be produced on record of this petition.

Dt. 5/3/90 (A.P.Ravani, J.) "

2. Mr.P.M.Bhatt, learned counsel for the petitioner states that a statement was filed on 28th March 1990 in the Court, a copy of which is tendered to the Court. Therefore, the three names mentioned in para-1 are permitted to be added as respondents No.3, 4 and 5. It is further stated that Gopaldas Jivabhai has expired on 2nd July 1996 and his death certificate is also produced on record and it is further stated that respondents No.4

and 5 are the only heirs and legal representatives of respondent No.3. Therefore, their names may be shown accordingly. This prayer is granted.

3. Mr. Prabhakar Upadhyay, learned counsel appears for these respondents and waives service and has also tendered affidavit in reply.

4. Learned advocate for the petitioner as well as respondents who claim to be purchasers of the land, submit that the lands in question are still vacant lands and in their possession and without prejudice to their rights and contentions, they are prepared to handover the possession to the authorities and the authorities may be directed to maintain status quo as to that land and the claim of these parties that there is a bonafide transaction of sale for consideration and that question may be examined by the authorities. It is submitted that, under Rule - 5, a draft statement is required to be served to not only the holders of the land, but also to all other persons so far as known who have or are likely to have any claim or interest in the ownership or possession of the disputed land.

5. On behalf of the respondents authorities, it is submitted that this transaction cannot be said to be a bonafide transaction because no circumstance is present to show that the transaction is bona fide. It is also contended that the purchasers cannot be said to be agriculturists having agricultural land within 8 Kilo meters and therefore, the transaction would be contrary to the provision of the Tenancy Act. It is also submitted that this registered sale deed have not been produced before any authorities till today and no material has been produced at any stage before the authority showing that the transaction is bonafide, even though the owners were there.

6. Learned AGP has contended that if the vendors had already become the land holders before the appointed date, they would have made necessary declarations about their lands and the fact that they have not done so indicates that they have not bonafide purchased the land. It is also pointed out that the revenue records also shows that the petitioners continues to be the owners and in possession of the lands.

7. At this stage, it is not required to go into the merits of this contentions. In view of the offer made by the parties that the possession would be handed over to the Government and the Government shall maintain status

quo, it is in the interest of justice that the claim made u/s 4 (4) (A) is examined by the authorities.

8. Learned counsel submits that the possession will be handed over to the authorities within 15 days from today. The authorities are directed that the authorities shall maintain status quo as to the land. The parties shall appear before the Competent Authority and the Competent Authority shall decide afresh the questions under the Act in respect of this two lands bearing survey No. 1161 covered by the two sale deeds. To that extent, the orders of the authorities will stand set aside and the authorities are directed to consider the question raised by the parties u/s 4 (4) of the Act.

9. Rule made absolute accordingly by remanding the matter back to the Competent Authority for taking afresh decision in accordance with law and after taking possession and the authorities shall maintain status quo till its decision. If the parties fail to handover the possession to the Government as assured to the Court, this order will stand vacated and the petition will stand dismissed. The authorities shall decide the matter within three months.

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